

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.¹

PROMESA
Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**RESERVATION OF RIGHTS OF PSA CREDITORS REGARDING PLAN
SUPPLEMENT AND FINDINGS OF FACT AND CONCLUSIONS OF LAW**

To the Honorable United States District Court Judge Laura Taylor Swain:

The Ad Hoc Group of Constitutional Debtholders (the “Constitutional Debt Group”),² the Ad Hoc Group of General Obligation Bondholders (the “GO Group”),³ the Lawful Constitutional

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (iv) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (v) Puerto Rico Electric Power Authority (“PREPAP”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations); and (vi) Puerto Rico Public Buildings Authority (“PBA”) (Bankruptcy Case No. 19-BK-5233-LTS) (Last Four Digits of Federal Tax ID: 3801).

² The members of the Constitutional Debt Group and their respective holdings are set forth in the *Twelfth Supplemental Verified Statement of the Ad Hoc Group of Constitutional Debtholders Pursuant to Federal Rule of Bankruptcy Procedure 2019* [ECF No. 18491].

³ The members of the GO Group and their respective holdings are set forth in the *Thirteenth Supplemental Verified Statement of the Ad Hoc Group of General Obligation Bondholders Pursuant to Bankruptcy Rule 2019* [ECF No. 17397].

Debt Coalition (the “LCDC”),⁴ and the QTCB Noteholder Group (the “QTCB Group,”⁵ and collectively with the Constitutional Debt Group, the GO Group, and the LCDC, the “PSA Creditors”)⁶ respectfully state as follows:

STATEMENT AND RESERVATION OF RIGHTS

1. As the Court is aware, the PSA Creditors are signatories to that certain Amended and Restated Plan Support Agreement, dated as of July 12, 2021 (the “PSA”), and support confirmation of the *Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.* [ECF No. 19184] (as may be further amended, modified, or supplemented from time to time in accordance with the PSA, the “Plan”) on terms consistent with the PSA.⁷

2. Pursuant to the PSA and Plan, each of the “Definitive Documents” relating to the Plan—which are defined to include the “Plan,” the “Confirmation Order,” the “Plan Supplement,” and any other documents “necessary or desirable to implement, or otherwise relat[ing] to” the comprehensive settlement set forth in the PSA—shall be “in form and substance reasonably satisfactory to each” of the PSA Creditors. *See* PSA, § 1.2, at 8 (definition of “Definitive Documents”); *id.*, at 14 (“Plan Supplement” is “Definitive Document” that must be “in form and substance reasonably satisfactory” to the PSA Creditors); Plan, § 1.202. Further, the PSA sets forth a number of mandatory terms that must be included in the New GO Bonds Indenture, the

⁴ The members of the LCDC and their respective holdings are set forth in the *Thirteenth Supplemental Verified Statement of the Lawful Constitutional Debt Coalition Pursuant to Federal Rule of Bankruptcy Procedure 2019* [ECF No. 19128].

⁵ The members of the QTCB Group and their respective holdings are set forth in the *Eleventh Supplemental Verified Statement of the QTCB Noteholder Group Pursuant Bankruptcy Rule 2019* [ECF No. 19145].

⁶ The PSA Creditors do not assume any fiduciary or other duties to each other or to any other entity or individual.

⁷ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

CVI Indenture, and the Confirmation Order (among other Definitive Documents). *See* PSA, § 4.10(b).

3. On October 11, 2021, the Oversight Board filed the Plan Supplement. *See* ECF No. 18470. Drafts of the New GO Bond Indenture and the CVI Indenture (together, the “Indentures”) were attached to the Plan Supplement as Exhibits A and B, respectively. Since the Plan Supplement was filed, the PSA Creditors have been engaged in discussions with the Government Parties regarding the Indentures, and have provided numerous comments on the Indentures to ensure that their terms are consistent with the provisions of the PSA.

4. On October 25, 2021, the Oversight Board filed proposed *Findings of Fact and Conclusions of Law in Connection with Confirmation of the Seventh Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.* [ECF No. 18739] (the “Findings of Fact & Conclusions of Law”). On November 2, 2021, the PSA Creditors provided comments to the Oversight Board on the Findings of Fact & Conclusions of Law to ensure that the terms thereof are consistent with the provisions of the PSA. As of the date hereof, the PSA Creditors have not seen a revised draft of the Findings of Fact & Conclusions of Law, nor have they received a response to the comments provided to the Oversight Board.

5. On November 12, 2021, the Court entered the *Amended Order Directing Supplemental Briefing and Oral Argument on Issues Pertaining to the Confirmation Hearing* [ECF No. 19179], which requires that the Oversight Board file amended Findings of Fact & Conclusions of Law within “48 hours following the conclusion of the Confirmation Hearing.” *Id.*, ¶ 5. And while the PSA Creditors are not aware of a specific, Court-imposed deadline by which the Oversight Board must file any amendments to the Plan Supplement, the Oversight Board must necessarily do so prior to entry of the Confirmation Order and Findings of Fact & Conclusions of

Law. *Cf.* Plan, §§ 85.1(b)(vii), (ix) (Court approval of contents of Plan Supplement is a condition precedent to entry of Confirmation Order).

6. Although the PSA Creditors expect that continued discussions with the Government Parties will yield consensus on the Indentures and the Findings of Fact & Conclusions of Law (which must be in form and substance reasonably acceptable to the PSA Creditors), as of the date hereof, there are still a number of open issues with respect to these documents that remain outstanding. Accordingly, the PSA Creditors reserve all rights under the PSA with respect to the Definitive Documents, as well as the right to address any unresolved issues at subsequent hearings on confirmation of the Plan.⁸

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⁸ The PSA also requires the Government Parties to use their reasonable best efforts to cause the CVIs to be tax-exempt to the extent permitted by law. *See* PSA, §§ 4.1(e); 4.2(d). According to the testimony of David Brownstein at the Confirmation Hearing, whether and to what extent the CVIs may be issued as tax-exempt has yet to be resolved. *See* Transcript of Hrg. at 114:23 – 115:11, *In re Fin. Oversight & Mgmt. Bd. for P.R.*, Case No. 17-03283-LTS (D.P.R. Nov. 12, 2021). The PSA Creditors reserve all rights in regards to continuing efforts to cause the CVIs to be tax-exempt.

Dated: November 17, 2021
New York, NY

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